

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA**

IN RE:
BDC GROUP, INC.,
Debtor.

Case No. 23-00484
Chapter 7

**NOTICE OF MOTION FOR ORDER
APPROVING COMPROMISE OR
SETTLEMENT OF CONTROVERSY**

TO THE DEBTOR AND ALL CREDITORS AND PARTIES IN INTEREST:

NOTICE IS HEREBY GIVEN that on January 21, 2025, the undersigned Chapter 7 Trustee has filed the attached Motion for Order Approving Compromise or Settlement of Controversy (“Motion”) between Zayo Group, Inc, Keystone Savings Bank and the Chapter 7 Trustee on behalf of the Chapter 7 Bankruptcy Estate in the above-captioned case.

NOTICE IS FURTHER GIVEN that objections to said Motion, if any, shall be filed with the Clerk of the Bankruptcy Court, 111 Seventh Avenue SE, Cedar Rapids, IA 52401, with a copy to the undersigned attorney, Chapter 7 Trustee, the United States Trustee, and the Debtor, addresses below, on or before February 11, 2025.

NOTICE IS FURTHER GIVEN that if no objections are timely filed, an order may be entered granting the relief requested without further notice or hearing.

NOTICE IS FURTHER GIVEN that if any objections are timely filed, a hearing on the Motion and objections will be scheduled by separate notice.

Dated: January 21, 2025

Respectfully Submitted,

LALLY LEGAL GROUP, LLC

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Addresses:

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BDC Group, Inc. c/o Dennis C. Bruce 565 Eastview Ave Marion, IA 52302		

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 21, 2025, a copy of the foregoing document was filed with the Clerk of Court for the United States Bankruptcy Court for the Northern District of Iowa using the CM/ECF system, and served electronically on those participants that receive service through the CM/ECF System.

The undersigned further certifies that on January 21, 2025, a copy of the foregoing document and corresponding Motion was served via United States Postal Service, postage prepaid, upon the parties listed on the attached mailing matrix dated January 21, 2025.

By: /s/ Elizabeth M. Lally
Elizabeth M. Lally

Case 23-00484 Doc 579 Filed 01/21/25 Entered 01/21/25 09:03:45 Desc Main
 Label Matrix for local noticing 1 Stop Traffic Services LLC Document Page 3 of 32 1 Stop Utility & Construction
 0862-1 5636 Kendall Ct Unit A 5636 Kendall Ct Unit A
 Case 23-00484 Arvada, CO 80002-2747 Arvada, CO 80002-2747
 Northern District of Iowa
 Cedar Rapids
 Tue Jan 21 05:52:41 CST 2025

ABB (Fastwyre) 1605 Washington St Blair, NE 68008-1655	AG & EG, LLC c/o Andrew Galinsky 3900 Vandalia Road Des Moines, IA 50317-1550	ARIZONA DEPARTMENT OF REVENUE - Office of the Arizona Attorney General - c/o Tax, Bankruptcy and Collection Sct 2005 N Central Ave, Suite 100 Phoenix, AZ 85004-1546
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(u) BANK OF AMERICA, N.A.

(u) BMO Bank N.A., f/k/a Bank of the West, d/b (u) Breakout Capital Finance, LLC

(u) Dennis Bruce

(d) Complete Design Solutions, LLC
3620 Developers Rd.
Indianapolis, IN 46227-3520(u) Daniel R. Schmoldt Enterprises Inc.
4807 Rockside Road, Suite 240
,

(u) Deere Credit Inc.

(d) East Central Iowa Council of Governments
700 16th Street NE
Suite 301
Cedar Rapids, IA 52402-4665(d) Edge Consulting Engineers, Inc.
624 Water Street
Prairie Du Sac, WI 53578-1027(d) Farmers & Merchants Savings Bank
200 First Street SW
Cedar Rapids, IA 52404-5735(u) Five Star Communications, LLC (d) Green Note Capital Partners SPV LLC
1019 Avenue P Suite 401
Brooklyn, NY 11223-2366(d) Guy M. Turner, Inc.
PO Box 7776
Greensboro, NC 27417-0776(d) HM Cragg Co
7490 Bush Lake Road
Edina, MN 55439-2801

(u) Herc Rentals, Inc.

(u) Hiawatha Properties LLC

(d) ImOn Communications
PO Box 3446
Cedar Rapids, IA 52406-3446

(u) Isotropic Network, Inc.

(u) John Deere Construction & Forestry Company

(d) Keystone Savings Bank
81 Main Street
PO Box 367
Keystone, IA 52249-0367

(d) Brandon Kuenzi
Secretary
West Pacific Drilling, Inc.
PO Box 882
Silverton, OR 97381-0882

(d) L&M Underground Inc
7529 S. Storm Mtn
Littleton, CO 80127-3807

(u)Liquid Capital Exchange, Inc.

(u)Manchester Leasing Services, Inc.

(u)Official Committee of Unsecured Creditors

(d)Quality Power Solutions, LLC
5718 Manufacturers Drive
Madison, WI 53704-6276

(d)RP Construction, LLC
24008 Bishop Meade Place
Ashburn, VA 20148-1712

(d)Reyna Paz
President & CEO of RP Construction,
LLC.24008
Bishop Meade Place
Ashburn, VA 20148

(d)Rush M. Shortley
1921 51st Street NE
Cedar Rapids, IA 52402-2400

(u)Smith, Gambrell & Russell, LLP

(d)Watts Electric Company
c/o Brian S. Koerwitz
5825 South 14th Street, Ste. 200
Lincoln, NE 68512

(d)West Pacific Drilling, Inc
PO Box 882
Silverton, OR 97381-0882

End of Label Matrix
Mailable recipients 502
Bypassed recipients 34
Total 536

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA**

IN RE: BDC GROUP, INC., Debtor.	Case No. 23-00484 MOTION FOR ORDER APPROVING COMPROMISE
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COMES NOW Renee Hanrahan in her capacity as Chapter 7 Trustee (“Trustee”), and respectfully moves the Court to enter an Order approving the compromise reached between Zayo Group, Inc. (“Zayo”), Keystone Savings Bank (the “Bank”), and the Trustee on behalf of the Chapter 7 Bankruptcy Estate (“Estate”):

1. Debtor BDC Group, Inc. initiated this case as a Chapter 11 proceeding in June 2023, which was converted to a case under Chapter 7 on January 30, 2024. *See* Dkt. 384. The Trustee was appointed the same day and continues to serve and administer the Chapter 7 Estate in that capacity.

2. Prior to case conversion, Zayo entered into an agreement with the Debtor and the Bank and stipulated to an Order that required it to make certain payments and attend mediation on outstanding disputes. Dkt. 361. Zayo’s partial non-performance of that Order precipitated a dispute between Zayo and the Bank, and, tangentially, the Trustee/Estate. Following an Order in October 2024 that addressed Zayo’s conduct, Zayo made a payment and invited the Bank to participate in mediation to explore a global resolution of their disputes.

3. Formal mediation with Attorney Jeff Stone of Whitfield & Eddy occurred on December 18, 2024. Zayo and the Bank were not able to reach a resolution on that date, but were able to come to terms in the days that followed. The Trustee has since joined the agreement in exchange for the funds and other terms provided therein.

4. The Trustee believes that the Zayo/Bank/Trustee settlement will generate a return for the Estate while mitigating associated expenses, allowing assets of the Estate to be available for the administration of this case and for distribution to various creditors of the Estate.

5. A copy of the parties' agreement is attached as Exhibit 1 (the "Settlement"). As an outline of terms, Zayo, the Bank, and the Trustee have agreed that:

- a. Zayo will pay \$100,000.
- b. From Zayo's payment, the Bank will receive an amount equal to the costs of its Zayo-related attorneys' fees, contempt-related interest, and the costs of mediation.
- c. The Trustee will retain whatever balance of the \$100,000 that is not turned over to the Bank. The amount the Trustee retains will be free and clear of any lien, security interest, or claim that the Bank may have to it.
- d. Zayo will release the Estate and the Bank from any claims that it may have.
- e. The Estate and the Bank will release Zayo from any claims that they may have.

6. The Settlement brings to a close over twelve months of active litigation between Zayo, the Bank, and the Trustee, will result in the dismissal of Zayo's pending appeal, and resolves issues that have not yet advanced to a judicial forum. In absence of the agreement set forth in the Settlement, it is probable that the costs of pursuing Zayo would outstrip a return to the Estate, in which case the Estate would receive no return at all.

7. As further grounds supporting this Court's approval of the Settlement, the

Trustee has concluded: (i) the Estate lacks sufficient resources to reasonably and effectively pursue Zayo, (ii) Zayo is a large telecom company who has significant litigation resources at its disposal; (iii) there is no guarantee of recovery if the Estate pursues Zayo and abandoning claims provides no value to the Estate; and (iv) existing Estate resources are better directed elsewhere given the terms of the Settlement. *See Exhibit at 1 ¶ 3.*

8. Bankruptcy Rule 9019(a) provides that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” FED. R. BANKR. P. 9019(a).

9. A decision of whether to approve a proposed settlement agreement is within the sound discretion of the bankruptcy court. *See In re Simply Essentials, LLC*, 640 B.R. 922, 930 (Bankr. N.D. Iowa 2022) (*citing In re Hildreth*, No. 09-00293, 2012 WL 4520635 (Bankr. N.D. Iowa 2012)). Generally, settlements are favored. *Id* at 931. A bankruptcy court need not determine that the settlement is “the best result obtainable;” rather, the standard of review “is whether the settlement is fair and equitable and in the best interests of the estate.” *Ritchie Cap. Mgmt., L.L.C. v. Kelley*, 785 F.3d 273, 278 (8th Cir. 2015) (quoting *Tri-State Fin., LLC*, 525 F.3d 649, 654 (8th Cir. 2008)). In evaluating a settlement, the court need only ensure that “the settlement does not fall below the lowest point in the range of reasonableness.” *Id.* (quoting *Tri-State Fin.*, 525 F.3d at 654).

10. Courts have developed a four-factor test to assist with the application of these standards:

- (a) [t]he probability of success in litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; [and] (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Simply Essentials, 640 B.R. at 931 (quoting *Drexel v. Loomis*, 35 F.2d 800, 806 (8th Cir. 1929)).

To the extent a court concludes it is in the best interest of the creditors to approve a settlement, and the settlement is in the best interest of the Estate, the settlement approval should be granted. *Id.*

11. For the foregoing reasons, these guidelines are readily satisfied here. Through the Settlement, the Estate gets what it cannot get or cannot afford to get in the absence of the Settlement. Resolving claims with Zayo and a shared division with the Bank provides immediate resources to the Estate, eliminates any risks, and frees Estate resources to pay for other, non-litigation costs and claims. The Court should accordingly grant this Motion.

WHEREFORE, the Chapter 7 Trustee respectfully requests that this Court approve this Motion and enter an Order approving the Settlement as outlined herein and attached hereto, and directing and authorizing the parties to do anything and everything reasonably necessary to effectuate the compromise, and for such other relief as may be just and proper under the circumstances.

Dated: January 21, 2025

Respectfully Submitted,

LALLY LEGAL GROUP, LLC

By: /s/ Elizabeth M. Lally
Elizabeth M. Lally, #AT0013010
12020 Shamrock Plaza, Suite 200
Omaha, NE 68154
Phone: 402-778-4840
Email: elally@lally-legal.com
ATTORNEY FOR CHAPTER 7 TRUSTEE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 21, 2025, a copy of the foregoing document was filed with the Clerk of Court for the United States Bankruptcy Court for the Northern District of Iowa using the CM/ECF system, and served electronically on those participants that receive service through the CM/ECF System.

/s/ Elizabeth M. Lally

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) dated as of January 6, 2025, is entered into between Zayo Group, Inc., (“Zayo”), Keystone Savings Bank (the “Bank”), and Renee Hanrahan in her capacity as Chapter 7 Trustee (“Trustee”) of the Bankruptcy Estate of BDC Group, Inc. (“BDC”) (Zayo, the Bank, and Trustee are collectively the “Parties” and each is a “Party”).

RECITALS

A. BDC filed a voluntary petition for Chapter 11 bankruptcy relief on June 13, 2023 in the United States Bankruptcy Court for the Northern District of Iowa (the “Court”), docketed as case no. 23-00484 (the “Case”).

B. The Bank was BDC’s primary and senior lender before the Case continued that relationship through the Case via debtor-in-possession loan approved by the Court (the “DIP Loan”).

C. BDC provided construction and related services to Zayo before and until shortly after the filing of the Case. As a result, BDC asserted certain pre-petition and post-petition accounts receivable against Zayo (the “Zayo Debts”), which were subject to the Bank’s security interests granted under the DIP Loan.

D. BDC, Zayo, and the Bank agreed to, and the Court entered on January 24, 2024 (Dkt. 361), a stipulated order (the “Stipulated Order”).

E. On January 30, 2024, the Court entered an order converting the Case to Chapter 7; the Trustee was duly appointed as the Chapter 7 Trustee that same day.

F. Shortly after, disputes arose concerning Zayo’s continued obligation to satisfy the Zayo debts made the subject of the Stipulated Order. Those disputes were submitted to the Court, which issued a ruling in October 2024 (the “Contempt Order”).

G. Zayo timely commenced an appeal of the Contempt Order on October 16, 2024, in the U.S. District Court for the Northern District of Iowa, Case No. 1:24-cv-00114-LTS-MAR (the “Appeal”). Zayo also paid \$250,087.47 on October 24, 2024 pursuant to the Stipulated Order and the Contempt Order.

H. Zayo and the Bank agreed to mediate their respective positions in an effort to resolve all remaining disputes, including the subject matter of the Appeal. The successful mediation has culminated in Zayo and the Bank entering into this Agreement, which is joined by the Trustee.

I. Following her review of the case docket, schedules, claims, and the respective rights and interests in property of the estate, and in an effort to both maximize the value of the estate and minimize the risks inherent in litigation and costs of the same, the Trustee has determined, and upon consultation with counsel, that the terms and conditions within this Agreement are reasonable, fair, and in the best interests of the bankruptcy estate.

TERMS

1. Recitals. The recitals set out above are incorporated into this Agreement.

2. Contempt Order. Upon complete performance of this Agreement, the Parties agree that Zayo has satisfied all its obligations under the Contempt Order and the Stipulated Order.

3. Settlement Amount and Payment. Zayo must pay \$100,000 to the Trustee within 14 days after the Effective Date of this Agreement (the “Settlement Payment”). The Trustee must hold the Settlement Payment in trust pending the division provided for by this Agreement.

4. Settlement Division. The Bank and Trustee agree to divide the Settlement Payment as follows:

first, the Bank will be paid an amount equal to the sum of (i) the attorneys’ fees identified in its pending fee application (Dkt. 544) plus fees related to Zayo incurred after the application date, (ii) \$28,507.75, representing the difference between the interest the Bank requested in response to Zayo’s contempt (\$35,277.71) and the amount of interest that Zayo paid in October 2024 (\$6,769.96), and (iii) the Bank’s share of mediation costs; and

second, the Trustee will retain the remainder of the Settlement Payment that is not paid to the Bank for the benefit of BDC’s bankruptcy estate.

5. Limited Lien Release. As of the Effective Date, and conditioned upon the performance of all other obligations of this Agreement, the Bank releases any lien, security interest, and claim to the portion of the Settlement Payment that the Trustee retains.

6. October 2024 Payment Turnover. On October 24, 2024, Zayo wired \$250,087.47 to the Trustee pursuant to the Stipulated Order and Contempt Order and in satisfaction of certain pre-petition retainage that Zayo owed BDC. The transfer also included \$6,769.96 of interest. The Bank filed a Motion to Lift Stay with respect to Zayo’s October 2024 transfer on December 20, 2024 (Dkt. 573). Zayo and the Trustee agree with the contents of the Bank’s Motion and will not object to the relief requested therein.

7. Appeal Dismissal. Within 14 days after the Effective Date of this Agreement, Zayo must take all necessary steps to dismiss the Appeal with prejudice. All Parties are responsible for their own costs associated with the Appeal.

8. Trustee’s Release of Zayo. The Trustee, on behalf of the BDC bankruptcy estate, releases and discharges Zayo and its agents, attorneys, officers, directors, employees, parents, subsidiaries, representatives, affiliates, and insurers (collectively, the “Zayo Released Parties”) from any claims, demands, or causes of actions that the bankruptcy estate, the Trustee, or BDC has or may have against the Zayo Released Parties relating to BDC or the Case, whether known or unknown, contingent or matured, as of the Effective Date of this Agreement. The breach of any provision of this Agreement is expressly excluded from this release.

9. The Bank's Release of Zayo. The Bank releases and discharges the Zayo Released Parties from any claims, demands, or causes of actions that the Bank has or may have against the Zayo Released Parties relating to BDC or the Case, whether known or unknown, contingent or matured, as of the Effective Date of this Agreement. The breach of any provision of this Agreement is expressly excluded from this release.

10. Zayo's Release of the Trustee. Zayo releases and discharges the Trustee, the bankruptcy estate, BDC, and all of their respective agents, attorneys, representatives, and professionals (collectively, the "Trustee Released Parties") from any claims, demands, or causes of actions that Zayo has or may have against the Trustee Released Parties relating to BDC or the Case, whether known or unknown, contingent or matured, as of the Effective Date of this Agreement. The breach of any provision of this Agreement is expressly excluded from this release. Notwithstanding anything to the contrary contained in this subsection, the indemnification provision in any contract between BDC and Zayo remains in effect for any claims against Zayo by third parties for acts performed by BDC in connection with such contracts. Zayo and the Trustee represent that they are not aware of the existence of any such third party claims at the time of the execution of this Agreement.

11. Zayo's Release of the Bank. Zayo releases and discharges the Bank and its agents, attorneys, officers, directors, parents, subsidiaries, representatives, affiliates, and insurers (collectively, the "Bank Released Parties") from any claims, demands or causes of actions Zayo has or may have against the Bank Released Parties relating to BDC or the Case, whether known or unknown, contingent or matured, as of the Effective Date of this Agreement. The breach of any provision of this Agreement is expressly excluded from this release.

12. Mutual Cooperation. Each Party agrees to make reasonable efforts to take any action another Party reasonably requests to effectuate the terms of this Agreement.

13. Approval Motion. As soon as reasonably practicable following execution of this Agreement, the Trustee must file in the Case a motion under Bankruptcy Rule 9019, together with required supporting papers and required notices. If no objections are filed prior to the expiration of the bar date notice, the Trustee will submit the proposed form of order attached to this Agreement as Exhibit A (the "Proposed Settlement Order") with the Court seeking approval of the settlements and terms contained in this Agreement pursuant to local Court rules and practices. The Parties waive all appellate rights if the Court enters the Proposed Settlement Order without material modification.

14. Effective Date. The Effective Date of this Agreement is 14 days after entry of a final order of the Court (not subject to appeal) approving the Agreement.

15. Preservation of Rights. Except to the extent specifically provided or modified in this Agreement, the execution of this Agreement does not waive any of the Parties' rights and remedies, which remain in full force.

16. Governing Law and Jurisdiction. This Agreement is governed by and must be construed and interpreted according to the laws of the State of Iowa.

17. Modification. This Agreement may not be modified except by written agreement executed by each of the Parties and approved by the Court.

18. Binding Effect. This Agreement binds and inure to the benefit of the successors, heirs, and assigns of the Parties.

19. Construction and Interpretation. Each Party has been represented by counsel in the negotiation of this Agreement and the Proposed Settlement Order, which must be given effect according to their terms. The doctrine of *contra proferentem* does not apply. The Parties represent and warrant to each other that they have been represented by their respective chosen counsel, has relied upon the advice of the chosen legal counsel, that the provisions of this Agreement have been read and explained to them by that counsel, and that they understand and accept the provisions this Agreement.

20. Severability. The invalidity or unenforceability of any provision of this Agreement, whether in whole or in part, does not in any way affect the validity or enforceability of any other provision contained in this Agreement. All this Agreement's terms and conditions are material.

21. Electronic, Facsimile and Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which is an original but all of which together constitute one instrument. Counterparts may be delivered via facsimile, electronic mail or image, or other transmission method, and any counterpart so delivered has been duly and validly delivered and effective for all purposes. An electronic copy of this Agreement is be deemed an original.

IN WITNESS WHEREOF, the Parties have executed and delivered this Settlement Agreement as of the dates written below.

ZAYO GROUP, INC.:

Dated: _____

Signed: _____

By: _____

Title: _____

KEYSTONE SAVINGS BANK:

Dated: _____

Signed: _____

By: _____

Title: _____

RENEE HANRAHAN AS CHAPTER 7 TRUSTEE OF THE
BANKRUPTCY ESTATE OF BDC GROUP, INC.:

Dated: _____

Signed: _____